

The Resolution Report

News on dispute resolution trends, laws and ethics

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comments

Please send your comments to the Committee c/o the Dispute Resolution Center by one of the following methods.

E-mail to:
presss@flcourts.org

Fax to: (850) 922-9290

Mailing address:
500 S. Duval Street
Tallahassee, FL 32399

Comments are due by
December 17, 2004.

Proposed Revisions to Mediator Certification Qualifications

by Sharon Press

In this special issue of *The Resolution Report* we focus on the latest project of the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy, namely, the proposed revisions to the initial qualifications required to obtain certification as a mediator by the Florida Supreme Court.

The Committee is very interested in comments on the proposals which have not yet been submitted to the Supreme Court for consideration. Information on where to submit your comments is located in the box to the left.

Many of you may be wondering why the Committee is suggesting revisions to the qualifications. The following list represents some of the more important reasons:

- When the standards were proposed in 1987, the Special Rules Committee appointed by the Florida Supreme Court was very concerned about gaining acceptance from the Judiciary and the Bar for this new experiment with court-ordered mediation. The qualifications then proposed represented the Committee's best attempt to inspire confidence with the new program and encourage its use.
- Starting with the 1988 Society of Professionals in Dispute Resolution Commission on Qualifications, a general consensus has developed in the field that possession of paper credentials (academic degrees) does not accurately predict an individual's ability to be a good mediator. Thus, Florida's reliance on academic prerequisites for family, dependency, and circuit certification appear not to have an entirely rational basis.

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Mediator Ethics Advisory Opinions

Question 2003-010

As a certified county, family and juvenile dependency mediator, I would like to elicit the opinion of the Mediator Ethics Advisory Committee concerning the following:

Rule 10.520 states, "A mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation." My two questions go to whether a mediator can comply with particular provisions in (1) a statute and (2) an administrative order in a manner that is consistent with mediation ethics rules.

A. Is a mediator personally required to reduce all mediation agreements to writing?

The Florida Statutes referenced above states, "If an agreement is reached by the parties on the contested issues, a consent order incorporating the agreement shall be prepared by the mediator and submitted to the parties and their attorneys for review."

The Committee Notes following Rule 10.420 state in part, "Florida Rule of Civil Procedure 1.730(b), Florida Rule of Juvenile Procedure 8.290(o), and Florida Family Law Rule of Procedure 12.740(f) require that any mediated agreement be reduced to writing. Mediators have an obligation to ensure that these rules are complied with, but are not required to write the agreement themselves."

There is an apparent discrepancy between the statute and the ethical rule. I would appreciate a clarification of the mediator's ethical obligation in reducing agreements to writing.

B. May a mediator require the parties to immediately reduce their agreement to writing and to sign that written agreement?

Questions

about the standards of conduct contained in the Florida Rules for Certified and Court-Appointed Mediators should be addressed to: Mediator Ethics Advisory Committee, c/o Dispute Resolution Center, Supreme Court Building, Tallahassee, Florida 32399.

These opinions are rendered pursuant to the authority of rule 10.900, Florida Rules for Certified and Court-Appointed Mediators and are based on the specific facts outlined in the question. They are based on the Committee's interpretation of the rules in effect on the date the opinions were rendered. The summary has been prepared for quick reference. Any inconsistency between the summary and the opinion should be rendered in favor of the opinion.

Administrative Order (in my circuit) states, “When a mediated agreement is reached, the agreement shall immediately be reduced to writing, signed by both parties and their attorneys, and submitted to the court with a proposed order approving and adopting the agreement.”

Rule 10.420(c) states, “The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the parties and counsel the process for formalization and implementation of the agreement.”

A mediator is without authority to compel the parties to reach an agreement; however, to comply with this Administrative Order, must the mediator be the one to compel the parties to put their agreement in writing and sign it immediately?

I am concerned that there is a conflict between the mediator’s ethical obligations and this directive from the court. Would compliance with an administrative order requiring that a mediation agreement be immediately reduced to writing be consistent with the ethical rules?

*Certified County, Family and Dependency Mediator
Southern Circuit*

Authority Referenced

Rules 10.420, 10.520, Florida Rules for Certified and Court-Appointed Mediators
Rule 12.740, Florida Family Law Rules of Procedure
Section 61.183, Florida Statutes
MQAP 95-009

Summary

A. Pursuant to family court rules, a mediator is obligated to see that a mediated agreement is reduced to writing, but is not obligated to write the agreement. This rule does not conflict with the statutory provision requiring the mediator to prepare a consent order, since this provision merely requires such agreement to be incorporated into a consent order prepared by the mediator.

B. While a mediator cannot compel parties who have reached an agreement to put such agreement in writing and sign it immediately, the mediator does have the obligation to “discuss with the parties and counsel the process for formalization and implementation of the agreement,” and to see that the agreement is “memorialized appropriately.”

Opinion

Your questions raise some important issues regarding the interplay among various requirements applicable to a certified mediator. The general rule is that statutes, adopted via the legislative process, govern substance; court rules, adopted by the Florida Supreme Court, take precedence regarding procedural issues; and administrative orders of the chief circuit judge must be consistent with the state constitution and court rules. Finally, Committee Notes are provided for guidance and are explanatory, but do not have the force and effect of a rule.

A. As you correctly point out, rule 10.520 requires a mediator to comply with all statutes, court rules (state and local) and administrative orders relevant to the practice of mediation. In your specific instance, section 61.183, which governs mediation of dissolution of marriage, support and custody issues, contains the following provision:

(2) If an agreement is reached by the parties on the contested issues, a consent order incorporating the agreement shall be prepared by the mediator and submitted to the parties and their attorneys for review...

The Committee Note to rule 10.420 indicates that mediators “are not required to write the agreement themselves.” While this may appear to be a conflict, these obligations can be read to be consistent with each other. Specifically, the statute references the mediator’s obligation to prepare a “consent order,” while the rules specifically reference the “agreement.” Thus, reading section 61.183 and the rule together, mediators of contested issues “. . . of parental responsibility, primary residence, visitation, or support of a child . . .” are obligated, pursuant to the statute, to prepare the consent order and, pursuant to rule 12.740, Family Law Rules of Procedure, to see that the mediated agreement is reduced to writing, although they are not obligated to write the agreement themselves.

B. In the second question, you raise concern regarding the interplay between an Administrative Order of the circuit court which states that “when a mediated agreement is reached, the agreement shall immediately be reduced to writing...” and an ethical rule. The MEAC once again believes that these seemingly conflicting issues can be read consistently since the Administrative Order is written in the passive tense, that is, while it states that the agreement shall immediately be reduced to writing, it does not state who must reduce it to writing. Rule 10.420(c), puts the burden on the mediator to “cause the terms of any agreement reached to be memorialized appropriately,” but does not require that the mediator actually do the memorialization.

The MEAC also appreciates your recognition that a mediator is without authority to compel the parties to do anything. In fact, “[t]he underlying principle of mediation is that it is a consensual process whereby individuals in conflict arrive at an agreement which is mutually acceptable. It is not based on the power and authority of the mediator.” See MQAP 95-009. Thus, while a mediator cannot compel parties who have reached an agreement to put such agreement in writing and sign it immediately, the mediator does have the obligation to “discuss with the parties and counsel the process for formalization and implementation of the agreement,” and to see that the agreement is “memorialized appropriately.”

Signed: Fran Tetunic, Chair
Dated: February 13, 2004

Question 2003-011

I was recently informed that county mediators were informing participants what they believed the county judge would rule in their case. A county judge confirmed/encouraged this practice.

Is there an exception to the Standards of Professional Conduct Rule 10.370(c) for county mediators?

*Certified Family Mediator
Central Division*

Authority Referenced

Rules 10.200, 10.310, 10.330, and 10.370(c), Florida Rules for Certified and Court-Appointed Mediators

Summary

All of the Standards of Professional Conduct for Mediators found in Part II, Florida Rules for Certified and Court-Appointed Mediators, are applicable to all types of certified and court-appointed mediators. Thus, there is no exception for county mediators in relation to the provision prohibiting mediators from predicting how the court will decide a case.

Opinion

Rule 10.200, entitled "Scope and Purpose" makes Part II (Standards of Professional Conduct) applicable to all certified and court-appointed mediators. Rule 10.370(c) prohibits a mediator from offering a "personal or professional opinion as to how the Court in which the case has been filed will resolve the dispute." This provision was adopted to support party self-determination, rule 10.310, and mediator impartiality, rule 10.330, which are fundamental to the mediation process. The committee finds no exception to rule 10.370(c) for county court mediators.

Signed: Fran Tetunic, Chair
Dated: February 13, 2004

Question 2004-001

I am a certified county mediator. Recently I saw an advertisement for mediation services featuring a number of certified mediators. One mediator was referred to as Judge _____ (Pro Tempore), who was described in part as a Family Court Judge in a state other than Florida. Is it permissible for a part-time judge from another state to refer to himself with the title "Judge"?

*Certified County Mediator
Northern Division*

Authority Referenced

Rule 10.610, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinions 2002-003 and 99-013

Summary

Since the use of the term "judge" alone may confuse or mislead the public in violation of rule 10.610, the mediator may need to include clarifying information in order for such practice to be permissible.

Opinion

Advertisements of a mediator's qualifications must be accurate and a mediator must not engage in any marketing practices which contain false or misleading information. See Rule 10.610, Florida Rules for Certified and Court-Appointed Mediators. If the mediator is permitted to use the title "Judge" pursuant to the applicable rules, then use of the title in advertising is not false.

The more difficult question with which the Committee grapples is the identification of "misleading information." In two previous opinions relating to advertising the Committee addressed the concept of misleading information. In MEAC 2002-003, the Committee opined that the use of the generic "Certified Mediator" in advertising was inherently misleading absent a designation of the particular area(s) of mediator certification. In MEAC 99-013, the Committee stated that it would be misleading, and thus, ethically inappropriate, for a two member firm to list "Circuit Court Mediation" as a service provided without designating which attorney was certified if only one mediator was certified.

The Committee believes, in the instant situation, that use of the term "judge" alone may confuse or mislead the public. Therefore, the mediator may need to include clarifying information, such as the court's jurisdictional limit, the state in which the judge served, and if the judge is not an attorney. Finally, the mediator should consider the proximity of the clarifying information to the title in assessing whether the advertisement is misleading.

Signed: Fran Tetunic, Chair
Dated: May 14, 2004

Question 2004-002

I am a certified circuit mediator. I mediate, among other things, workers' compensation cases and have done so both as a state adjunct mediator and as a private mediator.

I know that the committee has previously considered ethical questions arising out of workers' compensation mediations (Advisory Opinion 2003-001), and that it is aware of the relevant statutes and rules that govern them. As one who is heavily involved in the process, I understand and am sympathetic to the concerns that prompted that advisory opinion. I agree with the committee's resolution.

I am constrained, though, to point out that there are other problems with workers' compensation mediations as state mediators typically conduct them. These problems go deeper than questions about whether an injured worker has bargaining power or whether insurance adjusters participate meaningfully in the process. These problems involve, ultimately, whether the process itself is meaningful.

It is clear from your earlier Advisory Opinion 2001-007 and rule 10.430 (cited therein) that it is inappropriate for a mediator to set arbitrary time limits for completing mediations and that sufficient time should be allotted for the parties "to fully exercise their right of self-determination."

Notwithstanding these precepts, the practice of many state mediators throughout the state appears to involve an across-the-board time limit (usually one hour) compounded by consistent double booking. The reason, I believe, for the time limit is so that the mediator can mediate as many as possible each day (and there are many, many state mediations to get done each day). Given that a certain number of mediations will cancel because the parties have resolved their differences before the scheduled mediation, similar considerations of efficiency lead to routine double booking.

The vices of these practices is that, when double (or even triple) booked mediations do not cancel, the result is catastrophic for the participants: they have only an hour and they have to share that hour with the other parties. It is not unusual, and in fact may be the norm, for state mediators to mediate several cases simultaneously.

The terms most often heard to describe the result are “farcical,” “circus-like,” a complete waste of time,” etc.

The professionals involved (the attorneys and insurance adjusters) are generally inured to this procedure and time wasted is written off as a “cost of doing business.” The injured workers and employer representatives, on the other hand, find it hard to believe that the process is meaningful and are shocked at the dissipation of resources (including their own). The questions for your consideration are: must a certified mediator employed by the state allow sufficient/appropriate time for completing mediations and may that mediator, as a matter of practice, double or triple book mediations?

*Certified Circuit Civil Mediator
Northern Division*

Authority Referenced

Rules 10.300, 10.310(a), 10.380(b)(1), 10.400, 10.420, 10.430, 10.600, and 10.620, Florida Rules for Certified and Court-Appointed Mediators
Rule 4.361, Florida Rules of Workers’ Compensation Procedure
MEAC Opinions 2001-007 and 2003-001

Summary

A certified mediator must allow “sufficient” and “appropriate” time for completing mediation, and should not double or triple book mediations.

Opinion

The Committee has previously determined that it has jurisdiction to issue advisory opinions in response to questions relating to workers’ compensation mediation. See MEAC 2003-001 and rule 4.361, Florida Rules of Workers’ Compensation Procedure.

The specific procedures which you describe, time limitations and double bookings, cause the Committee concern not only for workers’ compensation, but also for any other types of cases. It is not appropriate to impose arbitrary time limits on mediations. See MEAC 2001-007. This practice violates the parties’ right to self-determination contained in rule 10.310(a) by essentially requiring the mediator to declare an impasse upon the passage of an arbitrary amount of time, rather than for any of the legitimate reasons contained in rule 10.420. Such a practice also presents possible violations of rule 10.430, which requires that mediation be scheduled to allow adequate time for the parties to exercise self-determination.

The practice of double booking, when it results in one mediator conducting two mediations simultaneously is similarly objectionable. The Committee assumes that this practice involves a mediator either leaving a caucus, in which case both parties are left with nothing to do, or leaving a joint session, in which case any unobserved interaction between the parties will be unknown to the mediator. In either case, such a practice not only violates the requirement in rule 10.430 that a mediator perform mediation services in a timely manner, avoiding delays whenever possible, but also strikes at the integrity of the mediator, as referenced in rule 10.620. If the parties are charged for time when the mediator is not conducting their mediation, the requirement in rule 10.380(b)(1) that charges be based on actual time spent or allocated is violated. In addition, the practice of double booking also appears to violate rules relating to the responsibility of the mediator to the parties (rule 10.300), to the mediation process (rule 10.400), and to the mediation profession (rule 10.600).

Signed: Fran Tetunic, Chair

Dated: June 18, 2004

Advisory Opinions

ethical opinions online

Ethical opinions can be found online at www.flcourts.org. From the side menu select Judicial Administration and then Alternative Dispute Resolution to access the ADR Index Page.

www.flcourts.org

MEDIATOR QUALIFICATIONS BOARD UPDATE

At the time of this printing, 77 cases have been filed with the Mediator Qualifications Board since the Board was created in 1992. Since the last update, five cases reached closure and 12 new cases have been filed. The information from the cases that were resolved is provided for educational purposes.

Cases by Division		Mediator Certification Type of Case Involved	
Northern - 14 (18%)	County Mediator County Case15	Circuit Mediator Circuit Case21	
Central - 33 (43%)	County Mediator CDS Case2	Circuit Mediator Family Case2	
Southern - 30 (39%)	County Mediator Arbitration2	Circuit Mediator Federal Case3	
Who Filed Case	County Mediator Condo Mediation (DBPR)1	Circuit Mediator Mobile Home (DBPR)1	
Parties Involved in Mediation58	County Mediator No Mediation Involved3	Circuit Mediator Workers' Compensation1	
Attorneys8	Family Mediator Family Case19	County, Family, Circuit Mediator No Mediation Involved1	
Other11	Family Mediator Circuit Case1	Court-Appointed Mediator Family Case3	
	Family, Dependency Mediator No Mediation Involved1	Court-Appointed Mediator Circuit Case1	

The first grievance involved a family mediation conducted by Audrey Schneiderman, a non-certified mediator. The complainant alleged that the mediator violated rules 10.210 and 10.330(a), (b) and (c) [impartiality] by yelling at and being “very aggressive and condescending” to the complainant; rule 10.370(c) [professional advice and opinion]; by telling the complainant that she would “make a terrible witness” and “lose in court;” that the mediator purposely misled the complainant in order to get an agreement; and rule 10.350 [demeanor] by using profanity when speaking to the complainant. The complaint committee found facial sufficiency and requested a response from the mediator with regards to rules 10.310(a), (b) and (c) [self-determination]; 10.330(a), (b) and (c) [impartiality]; 10.350 [demeanor]; 10.370(c) [Professional Advice and Opinion]; and 10.620 [general integrity]. The mediator denied being partial, but conceded that she raised her voice to the complainant “in an effort to settle her down.” The mediator denied misleading the complainant and added that it was her “duty to present both parties with her impartial assessment as to how some of the issues may be construed by the court.” Finally, the mediator denied using any form of profanity during the mediation.

After reviewing the mediator's response, the committee hired an investigator. Based on this investigation, the committee decided to meet with the mediator and the complainant in an effort to resolve the complaint pursuant to rule 10.810(j). At the conclusion of the meeting, the mediator entered into the following agreement with the complaint committee:

Prior to the committee making a determination of probable cause, the mediator agreed to: attend and successfully complete a minimum of eight hours of continuing mediator education of which four must be in mediator ethics; observe two family mediations performed by a Supreme Court certified family mediator and conduct two family mediations under the supervision of a Supreme Court certified mediator subject to the advance approval of the Dispute Resolution Center. Upon completion of the continuing education and the required mediations, and no later than October 28, 2003, the mediator would apply for certification by the Supreme Court.

The mediator failed to complete all of the terms of the agreement prior to October 28. The complaint committee reconvened and extended an amended agreement to the mediator which called for the payment of \$600 to cover a portion of the costs incurred for the investigation and review of this grievance along with an acknowledgment that the "mediator" would never serve as a mediator in any court-ordered mediation from the date of the agreement. After receiving no response from the mediator, the committee found probable cause that the mediator violated 10.310(b) and (c), 10.330(a) and (b), 10.350, 10.370(c) and 10.620 and forwarded the complaint to a hearing panel. Prior to the hearing, the mediator agreed that she would not serve as a mediator in any court-ordered mediations and submitted the fee to cover partial costs. The hearing panel remanded the grievance back to the complaint committee in order to consider accepting the agreement, which the committee accepted on September 17, 2004.

The next grievance involved a circuit mediation conducted by a certified circuit mediator. Although it was filed in 2003, it involved a mediation from 1999; thus the standards of conduct in effect at that time were utilized in its review. The complainants alleged that, in violation of rules 10.040 [compliance with authority] and 10.080(a) [confidentiality], the mediator, when acting in the mediation capacity, was told an "untrue comment" about one of the complainants and then repeated the comment in a subsequent, unrelated mediation, in which he [the mediator] was now acting as a defense attorney. The complaint committee found the complaint to be facially sufficient and requested a response with regards to rules 10.040 and 10.080(a) in conjunction with section 44.102(3), Florida Statutes.

Mediator Qualifications Board (MQB) Vacancies

County Mediators Circuit Mediators

Dependency Mediators Attorney members*

* Must be a member of The Florida Bar with a substantial trial practice; must not be a certified mediator or judicial official.

Vacancies are in all divisions. Members are appointed for four-year terms.

If you are interested in serving on the Board, please submit a letter and résumé to:

Dispute Resolution Center
Supreme Court Building
Tallahassee, FL 32399.

See back page for additional opportunities.

After reviewing the mediator's response, the committee hired an investigator. Based on this investigation, the committee elected to meet with the mediator and the complainant in an effort to resolve the complaint. At the conclusion of this meeting, the committee found probable cause to believe that the mediator had violated rule 10.080(a), by revealing information obtained while serving as a mediator on April 1, 1999, in a subsequent mediation on April 8, 1999, in which he was acting as an attorney. The Committee decided, however, pursuant to rule 10.810(m), not to pursue the case for the following reasons. The violation, which was of an isolated nature, was recognized and understood by the mediator. The mediator had already incorporated into his mediator practice a heightened concern for confidentiality for mediation proceedings. In addition, the mediator apologized for the breach of confidentiality. Finally, the complainants expressed satisfaction with the mediator's admission and corrective action.

The next grievance involved a family (dissolution) mediation conducted by a certified family mediator. The complainant alleged that: the mediation was conducted in an "unfair manner" in violation of rule 10.230(b) and (c) [mediation concepts]; the mediator used "coercion and intimidation" by not allowing the complainant to discuss issues of importance to her in violation of rule 10.310(a) and (b) [self-determination]; and the mediation resulted in unreasonable monetary and emotional costs to the complainant in violation of rule 10.420(b)(2) [adjournment or termination of mediation]. The complaint committee found the complaint to be facially sufficient and requested a response with regards to the complaint and the rules cited therein, in addition to rules 10.380(a) and (b) [fees and expenses], 10.410 [balanced process], and 10.430 [scheduling mediation]. After reviewing the mediator's response and the pre-mediation agreement which was signed by the complainant, the committee dismissed any potential violations of 10.230 and 10.380 and retained an investigator on the remaining rules. Based on the investigation, the committee found that there was no probable cause to believe that there had been a violation of any of the standards and dismissed the complaint.

The next grievance was filed against a certified county mediator with regards to a landlord tenant county mediation. The complainant alleged that he was not an English speaker, but no interpreter was provided to him for the mediation; that the mediator "decided points of law," and that the mediation office denied the complainant access to witnesses. The complainant did not identify any specific rule violations. The complaint committee reviewed the grievance and dismissed it as facially insufficient because there were no specific facts alleged to support the allegations.

Finally, a grievance was filed against a certified county mediator in relation to private arbitration activities. The complainant alleged that the mediator "misused his office as a certified mediator" to attract customers for his for-profit arbitration corporation, which allegedly issued "phony arbitration awards." The complaint committee found the complaint to be facially sufficient and requested a response in relation to rules 10.110 [good moral character]; 10.600 [mediator's responsibility to the mediation profession]; 10.610 [advertising]; and 10.620 [integrity and impartiality]. The mediator responded that there was no evidence to support the allegation that he had used his Florida Supreme Court certification to advertise his arbitration practice and that he had not done so. The committee dismissed the complaint without prejudice pursuant to rule 10.810(h), Preliminary Review.

Proposed Revisions continued from page 1

- There are any number of well known mediators who are well qualified to serve as mediators who cannot be certified based on the current qualifications. For example, I am confident that nearly every mediator in Florida is familiar with the book *Getting to Yes* and the internationally renowned mediators/authors Roger Fisher and Bill Ury. Despite their known expertise, if either were to file an application to become certified as a circuit mediator in Florida, his application would be denied.
- Since 1990, when the Florida Supreme Court took over the certification of mediators, there have been countless requests for reviews of staff denials of certification. These reviews were initially considered by the Supreme Court Committee on Mediation and Arbitration Training and are now considered by the Supreme Court Committee on ADR Rules and Policy. In both cases, the Committee would make a recommendation to the Chief Justice who would then make the final determination. There have been many requests over the years which were problematic for everyone involved because the applicant appeared to be well qualified to be certified, but did not meet the specific requirements of the rule. Some examples include, an attorney licensed in Florida and Alabama applying for circuit certification who was denied certification because he only had one year of "Florida practice." A certified county mediator and certified financial planner applying for family certification who was denied certification because she was not a certified public accountant and did not have a masters or PhD in one of the specified fields. With each such request, the Committee became less comfortable about the specified qualifications.
- As Florida continues to become more diverse, the Committee was concerned that the certified mediator pool should better reflect the population. The present qualifications do not promote ethnic and racial diversity, nor do they promote diversity of practice and background which the Committee believes to be an essential goal.
- Finally, while Chief Justice, Justice Anstead directed the Committee to review the qualifications and make recommendations regarding revisions.

Please note that any certified mediator who maintains his or her certification status will not be affected by these proposed revisions for any current area of certification. Currently certified mediators may wish to review the section on proposed changes to the Continuing Mediator Education (CME) requirements (page 22) and the penalties for allowing one's certification to lapse (page 19).

Thank you in advance for your careful consideration. Please return comments by December 17 and watch *The Resolution Report* for more updates regarding the proposals.

Proposed Policies and Procedures to Implement Revisions to Qualifications

Certification and Renewal

The certification application provided by the Dispute Resolution Center shall be completed by all individuals seeking certification, in accordance with the following procedures:

Upon receiving the list of individuals completing training from a certified mediation training provider, the Center shall send to all individuals on the list an application and information on the certification requirements.

To obtain certification, an applicant shall meet all certification requirements pursuant to rule 10.100 which will be amended to reflect the proposed qualifications requirements which follow and shall have completed the requisite certified mediation training program within two years immediately preceding the date of application.

An application shall be complete upon filing. However, if incomplete upon filing, such incomplete application may not remain pending with the Center for a period longer than one year. Any application pending more than one year from the date of original filing shall be denied and returned to the applicant. The one-year period shall be tolled during any review by the Center or Mediator Qualifications Board.

Applications must include two original letters of reference attesting to the applicant's good moral character. These letters must be written by non-family members who are familiar with the experience and qualifications of the applicant. Any applicant relying on an educational degree shall provide evidence of such degree in the form of a transcript mailed directly from the educational institution to the Center. Such applicant must also enclose a copy of the diploma evidencing such education. In the event that such documentation is unavailable, the applicant must submit another form of appropriate documentation, such as a sworn affidavit. Any applicant requesting certification on the basis of licensure in a profession shall provide all applicable information necessary for the Center to verify such licensure. Any applicant requesting certification on the basis of specific experience, shall provide a resume detailing the experience and any other information necessary for the Center to verify such experience.

Certification Requirements

Pursuant to rule 10.100, the following requirements for mediator certification are established. These requirements shall apply to all persons seeking certification as a mediator on or after [one year from date adopted].

Appendix A is a table which illustrates the contents of this section. Any discrepancy between the table and the certification requirements in this section shall be resolved in favor of this section.

County Court Mediators

Any person applying for certification as a county court mediator is required to have 100 points, with 30 points for successful completion of a Florida Supreme Court certified county court mediation training, ten points for Education, and 60 points for Mentorship. An applicant must have at least a high school diploma or a GED (General Equivalency Diploma). Additional points shall also be provided in the sections dealing with Education/Mediation Experience, Mentorship, and Miscellaneous activities.

Family Mediators

Any person applying for certification as a family mediator is required to have 100 points, with a minimum of 30 points for successful completion of a Florida Supreme Court certified family mediation training program, 25 points for Education/Mediation Experience and 30 points for Mentorship. An applicant must have a minimum of a bachelor's degree. Additional points above the minimum requirements may be awarded for completion of additional Education/Mediation Experience, Mentorship, and Miscellaneous activities.

Circuit Court Mediators

Any person applying for certification as a circuit court mediator is required to have 100 points, with a minimum of 30 points for successful completion of a Florida Supreme Court certified circuit mediation training, 25 points for Education/Mediation Experience, and 30 points for Mentorship. An applicant must have a minimum of a bachelor's degree. Additional points above the minimum requirements may be awarded for completion of additional Education/Mediation Experience, Mentorship, and Miscellaneous activities.

Dependency Mediators

Any person applying for certification as a dependency mediator is required to have 100 points, with a minimum of 30 points for successful completion of a Florida Supreme Court certified dependency mediation training, 25 points for Education/Mediation Experience, and 40 points for Mentorship. An applicant must have a minimum of a bachelor's degree. Additional points above the minimum requirements may be awarded for completion of additional Education/Mediation Experience, Mentorship, and Miscellaneous activities.

Florida Supreme Court Certified Mediation Training

Applicants must complete a Florida Supreme Court certified training program of the type for which they are seeking certification.

Education/Mediation Experience

Points shall be awarded in accordance with the following schedule (points are only awarded for the highest level of education completed; honorary degrees are not included):

High School Diploma/GED	10 points
Associates Degree	15 points
Bachelors Degree	20 points
Masters Degree	25 points
Masters Degree in Conflict Resolution	30 points
Doctorate (e.g., JD, MD, PhD, EdD)	30 points
PhD from Accredited Conflict Resolution Program	40 points

In addition, five points will be awarded for completion of a graduate level conflict resolution certificate program in an institution which has been accredited by Middle States Association of Schools and Colleges, the New England Association of Schools and Colleges, the North Central Association of Schools and Colleges, the Northwest Association of Schools and Colleges, the Southern Association of Schools and Colleges, the Western Association of Schools and Colleges, the American Bar Association, or an entity of equal status.

An additional one point per year will be awarded to a Florida Supreme Court certified mediator for each year that mediator has mediated at least 15 cases of any type. In the alternative, a maximum of five points will be awarded to any mediator, regardless of Florida Supreme Court certification, who has conducted a minimum of 100 mediations over a consecutive five-year period.

Mentorship

In order for an applicant to be awarded mentorship points, the applicant must work with at least two different certified mediators and the mediations involved must be of the type for which certification is sought.

Ten points will be awarded for each completed supervised mediation and five points for each mediation session observed.

Mediation Observations

For each observation required for certification, the trainee must observe an entire session of the type of mediation for which certification is sought, conducted by a certified mediator of the type for which certification is sought. The observation requirement shall not be satisfied by any individual who is a party, participant, or representative in the mediation. A trainee may not fulfill the observation requirements before beginning a certified mediation training program. The observation requirement may be completed

prior to the conclusion of the certified mediation training program. An appellate or pre-suit mediation which is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and if conducted by a certified mediator of the type for which certification is sought may be utilized for observation purposes. A federal court mediation conducted by a certified circuit mediator may be utilized to fulfill a circuit mentorship. Administrative agency mediation conducted under rules and procedures other than that of the state trial courts, may not be utilized to fulfill the mentorship requirements.

Supervised Mediations

The requirement that the trainee conduct a mediation under the supervision and observation of a certified mediator may be fulfilled by the trainee co-mediating with a certified mediator, only if, in the opinion of the certified mediator, the trainee had a significant impact on the outcome of or made a substantial contribution to the mediation. At the conclusion of the mediation, the mentor shall determine if the trainee had a significant impact on the outcome of or made a substantial contribution to the mediation. If so, it may qualify as a “supervised” mediation. If not, it will qualify only as an observation.

For purposes of the requirement to conduct mediations, mediation is defined as a complete case, which may consist of multiple sessions. The entire mediation shall be co-mediated or observed by a certified mediator of the type for which certification is sought. In the event the trainee is only able to participate in a single session of a multi-session mediation, such participation qualifies as an observation regardless of the trainee’s level of participation. An appellate or pre-suit mediation which is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and if conducted by a certified mediator of the type for which certification is sought may be utilized for the requirements to conduct mediations under observation and supervision. A federal court mediation supervised by a certified circuit mediator may be utilized to fulfill a circuit mentorship. Administrative agency mediation supervised under rules and procedures other than that of the state trial courts, may not be utilized to fulfill the mentorship requirements.

Miscellaneous

Five points shall be awarded to applicants currently licensed or certified in any United States jurisdiction in psychology, accounting, social work, mental health, health care, education or to practice law or mediation. Such award shall not exceed a total of five points regardless of the number of licenses or certifications obtained.

Five points shall be awarded for possessing conversational ability in a foreign language as demonstrated by certification by the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Test, qualification as a court interpreter, accreditation by the American Translators Association, or approval as a sign language interpreter by the Registry of Interpreters for the Deaf. Such award shall not exceed five total points regardless of the number of languages in which the applicant is proficient.

Five points shall be awarded for each of the following three categories: successful completion of an additional mediation training program (30 hours minimum in length) certified/ approved by a state or court other than Florida in addition to the required Florida Supreme Court certified mediation training program; certification or being on a roster as a mediator by a court or state other than Florida; certification as a mediator by the Florida Supreme Court. Such award shall not exceed five points per category regardless of the number of trainings completed or certifications obtained.

Fees

The following fees shall be required for the application and certification process:

Application Fee:	\$10 (non-refundable)
Certification Fees:	
County:	\$15
Family:	\$100
Circuit:	\$100
Dependency:	\$50
Family/Circuit:	\$175 (filed simultaneously)
Family/Dependency:	\$130 (filed simultaneously)
Circuit/Dependency:	\$130 (filed simultaneously)
Family/Dependency/Circuit:	\$200 (filed simultaneously)

The \$10 application fee is non-refundable. Certification fees shall be returned to applicants who, upon review of their applications, are deemed ineligible to be certified. Applicants who are denied certification may reapply upon meeting the qualifications for certification.

Applicants who meet the requirements for mediator certification shall be certified for a two-year period and shall be provided with a certificate from the Supreme Court evidencing such certification. Mediators seeking continued certification shall be required to file an application for renewal. Renewal fees shall be at the same levels as above. All mediators seeking renewal shall be responsible for these fees.

Mediators whose certification has lapsed may renew certification up to 180 days from the lapse date upon payment of an additional late-fee in an amount equal to the mediator's renewal fee. Mediators who apply for renewal within 365 days after the lapse date will be required to pay a late-fee equal to five times the mediator's renewal fee, up to a maximum of \$500. Mediators who apply for certification after day 365 will be required to meet the initial requirements for certification, including satisfactory completion of a certified mediation training program and fulfillment of the mentorship requirements. For purposes of this paragraph, the lapse date reverts back to the initial renewal date, notwithstanding any CME extensions.

An applicant or mediator who disagrees with a finding of ineligibility may object in writing within 35 days of the initial determination of ineligibility as indicated in a certificate of mailing. Any such response shall be reviewed by the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy, which may appoint a subcommittee to review such matters, and which shall make a recommendation to the chief justice. The decision of the chief justice shall be final.

A mediator may request an extension of the renewal requirements and a waiver of any penalties for an extraordinary hardship. If such request is denied, an appeal may be taken to the Alternative Dispute Resolution Rules and Policy Committee, which may appoint a subcommittee to review such matters, and which shall make a recommendation to the chief justice. The chief justice's decision will be final.

All certification, application, renewal and late fees shall be deposited in the Supreme Court's Mediation and Arbitration Trust Fund to be used to provide support for implementing the applicable statutes, rules, and this administrative order.

Mentorship Requirements

Mentorship shall include observing mediations conducted by certified mediators and conducting mediations under the supervision and observation of certified mediators. The mentorship requirements for those seeking certification shall be performed in a manner consistent with the following requirements:

Responsibility of Individuals Seeking Certification (Trainees)

The responsibility of structuring a mentorship rests with each trainee. The trainee shall not receive any fees for any case which the trainee utilizes to complete the required mentorship.

Responsibility of Certified Mediators

All duly certified mediators are required to allow, upon request, a minimum of two mediation observations or supervised mediations per year. The certified mediator shall not charge the trainee any fees to observe a mediation conducted by the certified mediator, but may charge a reasonable fee for observing and supervising a trainee while the trainee conducts a mediation. In addition, the certified mediator shall be entitled to any compensation paid for the mediation. The certified mediator shall remain in control of the case.

Responsibility of Court Mediation Programs

State-funded trial court mediation programs shall assist trainees in completing their mentorship requirements.

Confidentiality

The confidentiality and privileges provided in the Mediation Confidentiality and Privilege Act, shall apply when a trainee serves as a mediator, co-mediator or observer.

Message from the Director

Bonnie, Charley, Frances, Ivan and Jeanne! What a season it has been! Amazingly, fate smiled down upon the Dispute Resolution Center and in between all of the hurricanes, we were able to host the 13th Annual DRC Conference for Mediators and Arbitrators in Orlando. Over 800 dispute resolvers gathered together for the annual event. Attendees commented favorably on our new locale, the Rosen Centre, and on the important content of the conference which included a major focus on the new Mediation Confidentiality and Privilege Act. If you have not yet found a copy of the Act and reviewed it, do not delay. You can download a copy off of our website at www.flcourts.org (select Judicial Administration and then Alternative Dispute Resolution). For a more detailed discussion of the Act, you might also consider purchasing one of the tapes from the conference which are available through Convention Recordings (see order form in this issue).

Let me close by expressing my best wishes for a speedy recovery to all who have been affected by the hurricanes. For those of you who know colleagues who have been displaced or may not be in a position to receive *The Resolution Report*, I hope you will share this information with them. If any certified mediator has difficulty completing the required CMEs, remember that you may always request a 90 day extension in order to complete the requirements by sending in your updated renewal form along with the required fee. Be sure to postmark it by your renewal date to avoid any late fees. In addition, individual hardship extensions will be granted as needed. I hope by the next *Report*, we all are on the way to a good new year. Until next time... Sharon.

APPENDIX A

Points Needed Per Area of Certification		Minimum Points Required in Each Area
County	100	30 certified county mediation training; 10 education (minimum HS Diploma/GED); 60 mentorship
Family	100	30 certified family mediation training; 25 education/mediation experience (minimum Bachelors Degree); 30 mentorship [and requires 15 additional points]
Dependency	100	30 certified dependency mediation training; 25 education/mediation experience (minimum Bachelors Degree); 40 mentorship [and requires 5 additional points]
Circuit	100	30 certified circuit mediation training; 25/education/mediation experience (minimum Bachelors Degree); 30 mentorship [and requires 15 additional points]
Additional points may be earned for education/mediation experience, mentorship and miscellaneous activities.		

Education/Mediation Experience (points awarded for highest level of education received)			
HS Diploma/GED	10 points	Masters Degree in Conflict Resolution	30 points
Associates Degree	15 points	Doctorate (e.g., JD, MD, PhD, EdD)	30 points
Bachelors Degree	20 points	PhD from accredited CR Program	40 points
Masters Degree	25 points	Graduate Certificate CR Program	+5 points
Florida certified mediator: 1 point per year in which mediated at least 15 mediations (any type) OR any mediator: 5 points for minimum of 100 mediations (any type) over a 5 year period			

Mentorship - must work with at least 2 different certified mediators and must be completed for the type of certification sought	
Observation	5 points each session
Supervised Mediation	10 points each complete mediation

Miscellaneous Points	
Licensed to practice law, psychology, accounting, social work, mental health, health care, education or mediation in any US jurisdiction	5 points (total)
Florida Certified Mediator	5 points (total)
Foreign Language Conversational Ability as demonstrated by certification by ACFTL Oral Proficiency Test; qualified as a court interpreter; or accredited by the American Translators Association; Sign Language Interpreter as demonstrated by approval by the Registry of Interpreters for the Deaf	5 points (total)
Completion of an additional mediation training program (minimum 30 hours in length) certified/approved by a state or court other than Florida	5 points (total)

Proposed Revisions to Policies and Procedures Governing Continuing Mediator Education

Continuing Mediator Education

The purpose of continuing mediator education (CME) shall be to enhance the participant's professional competence as a mediator. The requirement of CME and the reporting thereof shall apply to all certified mediators seeking renewal ~~on or after April 1, 2002~~ and shall be fulfilled in accordance with the following procedures:

General Requirement

In order to qualify as CME, a course or activity shall have significant, current intellectual or practical content and shall constitute an organized program of learning directly related to the practice of mediation. CME shall be conducted by an individual or group qualified by practical or academic experience. All certified mediators (mediators) must complete a minimum of 16 hours of CME, which shall include a minimum four hours of mediator ethics, a minimum of two hours of domestic violence education and a minimum of one hour of diversity/cultural awareness education, in each two year renewal cycle, including the two years following initial certification. In addition, For family and dependency mediators must complete an additional two hours ~~four hours~~ of the required 16 hours ~~must be~~ in domestic violence ~~training~~ education per each renewal cycle for a total of four hours. Mediator certification shall not be renewed until all CME requirements are completed.

Mediators who are certified in more than one area must complete 16 hours of CME applicable to each of their areas of certification. Hours completed may be utilized toward more than one area of certification if the subject matter is relevant to the field(s) of certification. For example, courses on such topics as mediator ethics, domestic violence and general mediation skills may be credited to any or all of the areas of certification.

Definition

A CME hour is defined as 50 minutes. CME may be completed during the mediator's renewal cycle in any of the following formats:

- (1) ~~attendance at~~ attending a live lecture or seminar;
- (2) ~~attendance at~~ listening to or viewing an audio or video ~~playback~~ presentation of a lecture or seminar with a group, and participating in a discussion of ~~discusses~~ the materials presented;

- (3) listening or viewing audio or video presentations;
- (4) co-mediating or supervising trainees as part of the trainees mentorship requirements;
- (5) participating in internet presentations;
- (6) lecturing or teaching in ~~qualified~~ CME courses; and
- (7) authoring or editing written materials submitted for publication and that have significant intellectual or practical content directly related to the practice of mediation.

Continuing education completed for another profession's continuing education requirement may be used as CME if the material bears directly on the mediator's mediation practice and complies with the CME guidelines set forth in this order.

At a minimum, fifty percent of the required CME hours must be satisfied by attendance, not as a lecturer or presenter, at a live lecture, live seminar, or an audio/video playback of a seminar attended by a group that discussed the materials presented. Interactive internet presentations may be counted as attendance at a live lecture. Non-interactive internet presentations shall be applied toward the audio-visual category. A maximum of ~~two~~ four hours of CME may be earned through mentoring as defined above. Mentoring activities cannot be applied toward the required ~~four hours~~ ethics, diversity/cultural awareness and/or domestic violence CME components.

Attending, lecturing or teaching the same CME presentation ~~more than once per renewal cycle~~, will not entitle a mediator to additional credit. The prohibition against repeat attendance shall not apply to annual conferences and yearly updates.

Reporting Requirements

Mediators must maintain proof of attendance of CME or other appropriate documentation and must report their CME at the end of each two year renewal cycle on the Center's renewal form. The mediator shall be responsible to keep all records relating to CME, which records shall be subject to audit. In addition, the mediator must certify that he or she has read the current Florida mediation rules, statutes and procedures.

Any CME hours completed may be utilized for only one renewal cycle. Hours in excess of the requirement shall not be carried forward to the next renewal cycle.

If all other qualifications for renewal are met, but a mediator is deficient ~~an audit reveals a deficiency~~ in CME credits, the mediator shall be notified in writing and certification shall be continued for 90 days from the notice of non-compliance ~~or the expiration of current certification whichever occurs first~~. During those 90 days, the mediator shall complete all remaining CME requirements in order to be eligible for renewal.

Investigator for Mediator Qualifications Board

Function: Upon appointment by a complaint committee and pursuant to any specific instructions, the investigator conducts fact-finding and investigates the allegations contained in the complaint and the mediator's response. Qualifications: Certification by the Florida Supreme Court as a county, family and/or circuit mediator; or licensure as an attorney; or at least 5 years experience as an investigator in any administrative, civil or criminal proceeding. Compensation: \$50/hour with a maximum payment of \$1,000.

Prosecutor (Counsel) for Mediator Qualifications Board

Function: Investigating and presenting the complaint to the hearing panel. Prosecutor does not serve as counsel to the complainant. Qualifications: Membership in The Florida Bar with a minimum of three years legal experience; experience prosecuting or defending grievances or criminal matters; and Certification by the Florida Supreme Court as a county, family, and/or circuit mediator. Experienced mediators preferred. Compensation: \$60/hour with a maximum payment of \$1,200.

Please submit a separate letter and résumé for each position in which you are interested to: Dispute Resolution Center, Supreme Court Building, Tallahassee, FL 32399.

The Resolution Report

NEWSLETTER

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